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Supreme Court, U.S.
FILED

No. 03-975 DEC 30 2003

OFFICE OF THE CLERK

In The

# Supreme Court of the United States

**In re J. Patrick Lyons**

Petitioner,

v.

**Hon. Robert W. Ney**, United States House of Representative; **Hon. John B. Larson**, United States House of Representative; **Hon. Bart J. Gordon**, United States House of Representative; and, **Matthew S. Peterson**, Attorney, United States House of Representatives, Committee on House Administration,

Respondents.

## Petition for an Extraordinary Writ Of Mandamus

J. Patrick Lyons (*)
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931-389-9087

(*)Counsel of Record Pro se

## QUESTIONS PRESENTED

1. Whether this U.S. Supreme Court is of the opinion that in addition to the three provisions contained in the Constitution of the United States relating to age, citizenship, and inhabitancy, does Respondent **Gordon's** voluntary submission at or about 12 o'clock noon on the 3rd day of January 2001, **to the Oath requirement set forth in Article VI, Clause 3**, cause(d) Respondent Gordon, during the period from 1 April 2002 to 12 o'clock noon on 7 January 2003, to have been subject(ed) to the language contained in Article I § 6, clause 2; Amendment XX, § 1; Amendment XIV, § 3; and Tennessee Code Annotated 8-18-101 (5), quoted herein below?

a. Article I § 6, clause 2 , which directs in part "No Senator or Representative, **during the Time for which he was elected**, be appointed to any Civil Office under the authority of the United States, ..., **and no person holding any Office under the United States, shall be a Member of either House during his Continuance in Office."**

b. Amendment XX § 1, which directs: "The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin." And,

c. Amendment XIV § 3, which directs in part: "no person shall be a Senator or Representative in Congress, .., ...., who having previously taken an oath, as a member of Congress, ...., .., ...., .., to support the Constitution of the United States, .., ..."

2. Whether the wording contained in Tennessee Code 8-18-101, Eligibility to hold office, **(see Appendix C for copy of T.C.A. 8-18-101)**, which directs among others "are qualified to hold office under the **authority** of this state **except**:
(5) Members of Congress, and persons holding any office of profit or trust . . ., **under the United States**, refer to any candidate wishing only to hold a State of Tennessee office? **OR**, does the wording " are qualified to hold office under the **authority** of this state", refer to any Member of the Congress of the United States whose election results are certified by the authority of the State of Tennessee?

3. **Tennessee Law**: Whether Respondent Bart J. Gordon, assigned title of **officer of the courts of Tennessee** (Bar Number 2921), pursuant to Tennessee Supreme Court Rule 7, Article 1, Admission to the Bar of Tennessee directs among others: "1.05 **Status of persons admitted**. All persons admitted to the Bar of Tennessee are by virtue of such admission: (i) **officer of the courts of Tennessee**, is a judicial officer as defined in § 3 to Amendment XIV, to the Constitution of the United States?

4. Does Respondent Gordon, as a precondition to his becoming a judicial officer of the Courts of Tennessee **(Bar Number 2921)** voluntary submission to the requirements set forth in 4 U.S.C. § 101. OATH by members of legislature and officers, which directs in part: "every ..., ..., ..., and **judicial** officer of a **State**, shall, before he proceeds to execute the duties of his office, take an oath in the following form, to wit: I, _____, do solemnly swear that I will support the Constitution of the United States," (July 30, 1947, ch. 389, 61 Stat. 643,) – subject Respondent Gordon to the language contained in Amendment XIV, § 3, which directs in part: "No

person shall be a Senator or Representative in Congress, . ., . ., . ., **who having previously taken an oath, as a Judicial Officer of any State, . . . , to support the Constitution of the United States?**

5. Whether Respondent Bart J. Gordon, an "Incumbent Member" of the 107th Congress of the United States, who, received the majority of the votes in Tennessee's General Election voted on 5 November 2002, for Tennessee's Sixth Congressional District seat, is allowed to hold said Office for the 108th Congress, in violation to the disqualifications set forth in Article VI, Clause 3; Article I, § 6, cl. 2; Amendment XIV, § 1 of the Constitution of the United States?

6. Whether this Supreme Court is of the opinion that the word "Insurrection", as contained in Amendment XIV, § 3, to Constitution of the United States, has the same meaning as definitions of "insurrection" provided in Paragraph 6 c beginning on Page 25? And, if so, is definition applicable to 18 U.S.C. § 2383?

## PARTIES

Petitioner, J. Patrick Lyons, is an individual.

Respondents:

**Hon. Robert W. Ney**, Congress of the United States, (House of Representatives), Chairman Committee on House Administration, 1309 Longworth House Office Building, Washington, D.C. 20515-6157;

**Hon. John B. Larson**, Congress of the United States (House of Representatives) Ranking Minority Member – Committee on House Administration, 1419 Longworth House Office Building, Washington, D.C. 20515-0701; and,

**Bart J. Gordon**, Congress of the United States, (House of Representatives), 2368 Rayburn House Office Building, Washington, D.C. 20515-4206, **are Members of the 108th Congress of the United States.** And,

Respondent Matthew Petersen, Attorney, Committee on House Administration, 1309 Longworth House Office Building, Washington, D.C. 20515-01571 is an Attorney licensed by the District of Columbia Bar, and is employed by The United States House of Representatives, Committee on House Administration.

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Respondents.

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**Petition for an Extraordinary Writ Of Mandamus to the United States House of Representatives – Committee On House Administration.**

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**PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS**

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Petitioner, **J. Patrick Lyons**, respectfully petitions that an extraordinary writ of mandamus be granted to review the judgment of the United States House of Representatives -- "**The Supreme Administrative Agency of the United States**" – Committee on House Administration. Rule 14. 1(d).

**OPINION BELOW**

There are no opinions from a lower court.

This Petition is directed to the Opinion – House of Representatives Resolution 318 and REPORT – (To accompany House Resolution 318) of the United States House of Representatives, Committee on House Administration – issued in violation of Article I, § 5 to the Constitution of the United States which requires ("Each House shall be the Judge of the .. Qualifications of its own Members .."). Said House Resolution 318 and REPORT thereto, was published by the U.S. House of Representatives on the 15th day of July 2003, which directs among others:

**Background:** 2 U.S.C. § § 381, et seq., authorizes the House Administration Committee to judge the qualifications of its Members per U.S. Const. Art I, § 5, clause 1.

Initial relief to Petitioner **(was)** available only through the Federal Elections Act, 2 U.S.C. § 381,

et seq. (FCEA). The FCEA provides the mechanism for a candidate to "**claim()** a right to" office. 2 U.S.C. § 382. "Contested election cases **shall be heard by the (House Administration) committee AFTER** record is filed with the Clerk of the House of the House of Representatives.

REPORT (To accompany **H. Res. 318**). Report 108-208, from **Respondent Ney**, from the Committee on House Administration, dated **15 July 2003**, (see **Appendix A**), provides among others:

(1) The Committee finds that, "**On December 5, 2002, J. Patrick Lyons** ("contestant") filed with the Clerk of the House of Representatives a notice of Contest captioned "J. Patrick Lyons, Contestant, v. Bart J. Gordon, Contestee." The document, prepared by the contestant, was filed pursuant to the Federal Contested Elections Act (FECA).";

(2) **Standing**: "To have standing under the FECA, a contestant must have been a candidate for the election to the House of Representatives in the last preceding election and claim a right to contestee's seat. In the instant case, the contestant's name was printed as a candidate for the Sixth Congressional District on the official ballot for the November 5, 2002 election. **Thus, the first prong of the two-part test is met.**";

(3) **Second Prong**: As to the second prong, the contestant states in his Notice of Contest that "Contestant claim a right to Contestee's seat because, **the Contestee was ineligible/not qualified** to be on the 5 November 2002 General Election Ballot." The contestant, however, fails to **explain the logical connection between the**

**contestee's alleged ineligibility and the contestant's entitlement to the contestee's congressional seat**;

(4) "On **February 5, 2003**, by a voice vote, a quorum being present, the Committee agreed to a motion to report the resolution favorably to the House." **For the record**: Said Committee in support of its **5 February 2003**, DECISION to dismiss said Election Contest, used a DECISION **dated the 29th day of May 2003. (A period of 129 calendar days AFTER said 5 February 2003 voice vote was issued.)** See Footnote 5 on Page 3 of REPORT attached as Appendix A;

(5) Under **Analysis**, Page 4, provides "The Committee finds that, as a general rule, challenges to the qualifications of a member-elect to serve in Congress **(comments in brackets inserted by Petitioner:** To serve in Congress in violation to Article VI, Clause 3; Article I, § 6, cl. 2; Amendment XIV, § 3; and, Amendment XX, § 1**) fall outside the purview of the FCEA, . . ."**';

(6) Under **Basis of Contest**, Page 2 provides "moreover, the contestant asserts, that the contestee, **who is an inactive member of the Tennessee Bar**, is violating the "separation of powers" principle enshrined in the Constitution **by remaining a Judicial Officer of the Courts of Tennessee" while serving "as a Legislative Officer of the United States.**";

(7) Under **Basis of contest**, Page 2 provides, "..., the contestee (**Respondent Gordon**) qualifies as an ""insurrectionist" who is breaching his sworn duty to support the Constitution, siting Article VI, Clause 3. "The Senators and Representatives before mentioned,

. . ., and all . . . and **judicial Officers**, both of the United States, and of the several States, shall be bound by Oath or Affirmation, to support this constitution . . .";

(8) Under **Basis of Contest**, Respondents Ney and Larson acknowledge that the Committee understood the U.S. Constitution **disqualifications** upon which said Election Contest is based – on the Committee's finding under **Basis of Contest**, on page 2, which states: "....., according to the contestant, the contestee is constitutionally forbidden from holding federal office by:

a. **Article I, § 6, clause 2, which directs** "No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil office under the Authority of the United States, which shall have created, or the Emoluments whereof shall have been increased during such time, and no person holding Office under the United States, shall be a Member of either House during his continuance in Office.";

b. **Amendment XIV, § 3, which directs** "No person shall be Senator or Representative in Congress, * * * who, having previously taken an oath, as a member of Congress, * * * to **support the Constitution of the United States**, shall (**will**) have engaged in insurrection or rebellion against the same * * *."; and,

c. **Amendment XX, § 1, which directs**, "The terms of the president and Vice President shall end at noon on the 20th day of January, and the **terms** of Senators **and Representatives at noon on the 3rd day of January**, of the years in which such terms would have ended if this article had not been

ratified; and **the terms of their successors shall then began.**

(9) **EX PARTE COMMUNICATION**: Under "**Response by Mr. Gordon**" on page 3, said Committee reports "The contestee **did not file a formal answer** in response to the Notice of Contest **though he did submit a one-page letter dated January 3, 2003, that related to the matter**".

## JURISDICTION

1. The Constitutional provision believed to confer on this Court **[Original]** Direct Appeal jurisdiction to review an extraordinary writ of mandamus is Article III to the Constitution of the United States.

2. **Supreme Court Rule 20.1**: This petition is filed under this Court's Rule 11, in that an imperative public importance is present as to justify deviation from normal judicial practice detailing why exceptional circumstances warrant the exercise of this Court's discretionary powers, and why adequate relief cannot be obtained in any other form or from any other court:

a. **Background – "A responsibility of the Supreme Court is to be the ultimate interpreter of the Constitution of the United States."** It has long been held that a suite "arises under" the Constitution if a petitioner's claim "will be sustained and will be defeated if (it is) another." **Bell v. Hood, 327 U.S. 678, 685 (1946)**. See King County v. Seattle School District No. 1, 263 U.S. 363-364 (1923). Cf. Osborn v. Bank of the United States, 9 Wheat, 738 (1824). See generally C. Write, Federal Courts 48-52 (1963).

b. **Adequate relief unavailable**: Adequate relief cannot be obtained in any other form or from any other court because the 108th Congress of the United States terminates at 12 o'clock (**midday**) on Sunday, January 3, 2005. "**Neither the House of Representatives nor its committees are continuing bodies.**" Gojack V. United States, 384 US 702, 86 S. Ct. 1689. Any action filed in a district court would take two to three years to reach the Supreme Court of the United States. The fact the 108th Congress of the United States terminates at 12 o'clock (**midday**) on 3 January 2005, constitutes relief (**Petitioner's Seat in the 108th Congress for Tennessee's 6th Congressional District**) that could no longer be granted, thus, said action would become moot. **Justice delayed in this case would mean justice denied.**

c. This Petition for an Extraordinary Writ of Mandamus is to the United States House of Representatives. The Congress of the United States is the **supreme administrative agency** of our United States of America, thus, pursuant to the Rule 14.1, this Court has authority to review opinions or orders entered by Federal administrative agencies.

d. **The Supreme Law of the Land**? The key Words to this petition for an extraordinary writ of mandamus to review United States House of Representative ORDER (**REPORT** – To accompany House Resolution 318) are: "**Under OATH to support the Constitution of the United States**," per requirement set forth in Article VI of the Constitution of the United States – Article VI of the Constitution makes the Constitution the "**supreme law of the land**". In 1803, Chief Justice Marshall, speaking for an unanimous Court, referring to the

Constitution as "the fundamental and paramount law of the nation," declared in the notable case of Marbury v. Madison, (5 U.S. (1 Cranch) 137, 2 L.Ed. 60 1803), that "it is emphatically the province and duty of the judicial department to say what the law is." "It cannot be presumed that any clause in the Constitution is intended to be without effect; and, therefore, such a constriction is inadmissible, unless the words require it."

e. **Opposition to the U.S. Constitution**: Nonconformity to the Constitution and laws of the United States by the Federal Legislative Branch is an issue upon which this Supreme Court pursuant to the U.S. Constitution authority is required to act. The Supreme Court of the United States in Cf. Kilbourn v. Thompson, 103 U.S. 168, 204-205 **(1881)**, decided among others: "Especially it is competent and proper for this court to consider whether its (the legislature's) proceedings are in conformity with the Constitution and laws, because, living under a written constitution, **no branch or department of the government is supreme**; and it is the province and duty of the judicial department to determine in cases regularly brought before them, whether the powers on any branch of the government, **and even those of the legislature in the enactment of laws, have been exercised in conformity to the Constitution; and if they have not, to treat their acts as null and void.**" 103 U.S. at 199.

f. **Court's discretionary powers**: The exceptional circumstances that warrants the Court's discretionary powers are: **(1)** The issue before this Court is the fact that the Respondents **Ney** and **Larson** – members of the United States House of

Representatives have openly opposed the disqualification language contained in Article VI, Clause 3, to the Constitution of the United States via their (Ney and Larson) refusal to enforce Article I, § 6, clause 2; Amendment XIV, § 3; and, Amendment XX, § 1, against the Respondent Bart J. Gordon. Note: On February 24, 1803, U.S. Supreme Justice John Marshall delivered the Opinion of the Court in the noted Case Marbury v. Madison, relied on section 13 of the Judiciary Act of 1789, stating among others, "the Supreme Court shall also have . . . . **power to issue writs of mandamus to . . . . or person holding any office, under the authority of the united States.**" "The government of the United States has been emphatically termed a government of laws, and not of man. It would certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." "It cannot be presumed that any clause in the constitution is intended to be without effect; and, therefore, such a construction is inadmissible unless the words require it." "So if a law be in opposition to the constitution, if both the law and the constitution apply to a particular case, so that **the court must either decide** that the case conformably to the law, **disregarding the constitution**, or conformably to the constitution, disregarding the law; **the court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty**." "The judicial power of the United States is extended to all cases arising under the constitution." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 2L.Ed. 60 (1803). Respondent **Ney** and Respondent **Larson's** decision to dismiss Petitioner's Election Contest based on ", **no allegations of irregularities, fraud, or wrongdoing with respect to the election for the Sixth Congressional**

**District seat** versus considering the disqualifications provisions contained in Article VI, Clause 3; Article I, § 6, cl.2; Amendment XIV, § 3; and Amendment XX, § 1 to the Constitution of the United States constitute **non-conformity** with the Constitution of the United States and laws thereof "No Act of congress can authorize a violation of the Constitution." U.S. v. Brignoni-ponce, 422 U.S. 873, 95 S. Ct 2574.

g. **Petitioner has standing**: In accordance to the U.S. House of Representatives REPORT **(the Supreme Administrative Agency of the United States)** listed on Page 3 under STANDING, **Petitioner has standing** to bring this action – **(see Appendix A)**: "To have standing under the FCEA, a contestant must have been a candidate for election to the House of Representatives in the last preceding election and claim a right to the contestee's seat.. In the instant case, the contestant's name was printed as a candidate for the Sixth Congressional District on the official ballot for the November 5, 2002 election. **Thus, the first prong of the two-part test is met.**"

h. Additional compelling reasons why this Court must hear this action are:

(1) Article VI of the Constitution makes the Constitution "**the supreme Law of the Land.**" "No state legislator or executive **or judicial officer** (Respondent **Gordon)** can war against the Constitution **without violating his undertaking to support it.**" "No state legislator or executive **or judicial officer** can war against the Constitution **without violating his undertaking to support it.**"

Chief Justice Marshall spoke for an unanimous Court saying: "If the legislatures of the several states may, at will, annual the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery . . ." United States v. Peters, 5 Cranch 115, 136, 3 L.Ed. 53.

(2) It is worth noting that **if in fact the Constitution is the supreme Law of the Land**, America's Public Laws, from the Federal Mandatory Sentencing Act to Resolutions passed authorizing (?) America to go to war, are invalid because of the fact approximately 97 percent of the Members of Congress are serving in **OPPOSITION** to the disqualification language contained in Article VI, Clause 3; Article I, § 6, clause 2; Amendment XIV, § 3; and Amendment XX, § I. Any laws passed by individuals who are ineligible to hold Membership in the Congress of the United States under the Constitution of the United States – (**the supreme Law of the Land**) – all laws passed by such group of individuals must be at the least considered to have been passed in **nonconformity** to said Constitution. The Supreme Court of the United States in Cf. Kilbourn v. Thompson, 103 U.S. 168, 204-205 (**1881**), decided among others: "Especially it is competent and proper for this court to consider whether its (the legislatures') proceedings are in conformity with the Constitution and laws, because, living under a written constitution, no branch or department of the government is supreme; and it is the province and duty of the judicial department to determine in cases regularly brought before them, whether the powers on any branch of the government, and even those of the legislature in the enactment of laws, have been exercised in conformity

to the Constitution; **and if they have not, to treat their acts as null and void.**" 103 U.S. at 199.

3. **Speech or Debate Clause**: The Constitution of the United States, does not grant to respondents herein names, nor to any members of the Congress of the United States, authority to **oppose** Article VI, Clause 3; Article I, § 6, clause 2; Amendment XIV, § 3; and Amendment XX, § I. Therefore, Article I, § 6, is not an absolute bar to Petitioner's action – otherwise, any unconstitutional action taken by legislators or legislative employees would be insulated from judicial review by the Speech or Debate Clause.

4. **OATH**: Whether in 2003, the **Oath of office** still retains its potent **significant** and **supreme value**, least it be shamefully obvious to most reasonable minds around the World that advanced decadences in the uniform enforcement of America's Constitutional Principles has clearly allowed the Congress of the United States to regress to the level of practicing nothing more than dirty, vulgar, Roman Law?

5. No rehearing is (was) allowed. INFORMATION REGARDING TIMELY FILING: House Resolution 318 and REPORT is dated the 15th day of July 2003, forwarded to Petitioner with a U.S. House of Representatives – Committee on House Administration cover letter dated the 23rd day of July 2003, with the signature of Respondent Robert (Bob) Ney affixed, without a U.S. Postmark affixed, was received in Petitioner's P.O. Box 622, Shelbyville, TN 37160, on the 30th day of August 2003. See also Appendix B for copy of 29 April 2003, Committee on House Administration letter in which Petitioner is

informed of a decision of 5 February 03, bearing the signature of Respondent Matthew S. Petersen.

## CONSTITUTIONAL PROVISIONS INVOLVED

1. **Article VI, Clause 3 directs as follows:**
(3) The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support his Constitution; but no religious Test shall ever be required as a Qualification to any Office of public Trust under the United States.

a. **Analyzing/Classifying – U.S. Constitution**: In 1958, the 85th Congress of the United States, published in Volume One – United States Code – 1958 Edition, under "Analytical Index To the constitution of the United States and The Amendments Thereto", its analyzing/classifying of the U.S. Constitution. See Volume One – United States Code – 1958.

(1) **Article VI, Clause 3, as contained in the above reference Analytical Index:**

**Qualification for Office**. No religious test shall ever be required as a . . . . See Page Numbered LIX.

**Members of Congress** and of the State legislatures shall be bound by oath or affirmation to support the Constitution. See Page Numbered LVII.

**Oath or affirmation** to support the Constitution. Senators and Representatives, members of State

legislatures, executive, and judicial officers of the United States and of the several States, shall be bound by . . . . See page Numbered LVII.

**Senators and Representatives** shall be bound by an oath or affirmative to support the Constitution . . . . See Page Number LXI.

**State legislatures**, and all executive and **judicial officers** of the United States, shall take an oath to support the Constitution. **All members of the several** . . . See Page Numbered LXI.

**To support the Constitution**. Senators and Representatives, members of States Legislature, executive and judicial officers, both State and Federal, shall be **bound** by oath or affirmation . .

. . . . . See Page Numbered LI.

**Constitution**. All officers, legislature, executive, and Judicial, of the United States, and of the several States, shall be **bound** by an oath to support the . . . See Page Number LIII.

**Executive and judicial officers** of the United States and of the several States shall be **bound** by an oath to support the Constitution. . . . See Page Numbered LV.

**Judicial and executive officers** of the United States and of the several States shall be **bound** by an oath to support the Constitution. . . See Page Numbered LVI.

1. **Article I, δ 6, clause 2, directs as follows:**

(1) No Senator or Representative shall, during the time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time and no Person holding any office under the United States, shall be a Member or either House during his Continuance in Office.

a. **Article I, δ 6, clause 2, as contained in the above referenced Analytical Index: (See United States Code – 1958 Edition.)**

**No Senator or Representative shall, during his term**, be appointed to any civil office, which shall have been created, **or of which the emoluments shall have been increased**, during such term . . . See Page Numbered LII.

**No person** holding any office under the United States shall, **while in office**, be a member of either House of Congress. . . See Page Numbered LII. **(Inserted by Petitioner: 2 U.S.C. § 381. Definitions (e)** The term **"Member"** means an incumbent Representative in or Resident Commissioner to the Congress of the United States, **or** an individual who has been elected to either of such offices **but has not taken the oath of office.)** (Pub. L. 91-138, § 2, Dec. 5, 1969, 83 Stat. 284.)

**Disqualifications**. No Senator or Representatives shall, **during the time for which he was elected**, be appointed to any office under the United States which shall have been created or its emoluments

increased during such term. . . See page Numbered LIV.

**No person** holding any office under the United States shall, **while holding such office**, be a member of the.... See Page Numbered LV.

**No person, while a member of either House**, shall be appointed to any office, which shall have been created or the emoluments increased during **his membership**. . . See Page Numbered LV.

**Office under the United States**. No person shall be a member of either House **while holding any civil**. . .See Page Numbered LVII.

**No Senator or Representative** shall be appointed to any office under the United States **which shall have been created**, or its emoluments increased, **during the term for which he is elected**. . . See Page Numbered LVII.

**No member shall** be appointed **during his term** to any civil office which shall have been increased, **during such term**. . . See Page Numbered LX.

**No person** holding any office under the United States, **while holding such office**, be a member of the House of . . . See Page Numbered LX.

**No Senator or Representative shall, during the time for which he was elected**, be appointed to any civil office under the United States which shall have been created, or of which the emoluments shall have increased, **during such term**. . . See Page Numbered LXI.

**No person holding any office under the United States** shall be a member of either House **during his continuance in office**. . . See page Numbered LXI. **(Inserted by Petitioner: 2 U.S.C. § 381. Definitions (e)** The term **"member"** means an incumbent Representative in or Resident Commissioner to the Congress of the United States, or an individual who has been elected to either of such offices **but has not taken the oath of office.)** (Pub. L. 91-138, § 2, Dec. 5, 1969, 83 Stat. 284.)

3. **Amendment XIV, § 3, directs as follows:**

**Section 3**. No person shall be a Senator or Representative in Congress, or hold any office, civil or military, under the United States, or under any State, **who having previously taken an oath, as a member of Congress**, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, **to support the Constitution of the United States,** shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each house, remove such disability.

(1) **Amendment XIV, § 3, as contained in the above referenced Analytical Index: (See volume One – U.S.C. 1958) Representatives and Senators.** Prescribing certain disqualifications for office as. . . See Page Numbered LX.

**Persons** engaged in insurrection or rebellion against the United States disqualified for Senators or Representatives in . . . See Page Numbered LIII.

**Constitution**, and **then** engaged in rebellion against the United States. Disqualifications for office imposed upon certain class of persons who took oath to support the . . . See Page Numbered LIII.

**Disability**. No person shall be a Senator or Representative in Congress, or presidential elector, or hold any office, civil or military, under the United ates, or any State, who having previously taken an oath as a **legislative**, executive, **or judicial officer** of the United States, or **of any State**, to support the Constitution, **afterward** engaged in insurrection or rebellion against the United States. . . See Page Numbered LIV.

**No person shall be a member of either House**, presidential elector, or hold any office under the United States, or any State, who, having previously **sworn** to support the Constitution, **afterward**, engaged in insurrection or rebellion. . . See Page Numbered LIV.

**No person** having taken an **oath** as a **legislative**, executive, or **judicial officer** of the United States, **or of any state**, and **afterwards** engaged in insurrection or rebellion against the United States, shall be an elector. . . See Page Numbered LIV.

No person having as a legislative, executive, or judicial officer of the United States, or of any judicial officer of the United States, **or of any State**, taken an oath to support the Constitution, and **afterwards** engaged in insurrection or rebellion against the United States, shall be a member of the. . . See page Numbered LV.

**Insurrection or rebellion against the United States.** No person shall be a Senator or Representative in Congress, or presidential elector, or hold any office, civil or military, under the United States, or of any State, who, having previously taken an oath as a **legislative**, executive, **or judicial officer** of the United States, or **of a State, afterwards** engaged in. . . See Page Numbered LVI.

**Civil or military under the United States**, or any State, who had taken an oath as a **legislative**, executive, or **judicial officer** of the United States, or **of any State**, and **afterward** engaged in insurrection or rebellion. No person **shall** be a Senator, Representative, or Presidential elector, **or hold any office**. . . See Page Numbered LVII.

No person shall be a Senator or Representative who, having, as a Federal or State officer, taken an oath to support the Constitution, **afterward** engaged in rebellion against the United States. . . See Page Numbered LXI.

**Rebellion** against the United States. Persons who, **while holding certain Federal and State offices, took an oath to support the Constitution, afterward** engaged in insurrection or rebellion, **disabled from holding office under the United States.** . . See Page Numbered LIX.

## STATUTORY PROVISIONS INVOLVED

Statutory provisions involved are: 2 U.S.C. § § 381 through **391**; 1 U.S.C. § 204 (a) and (b), and **18 U.S.C. § 2383**.

## STATEMENT OF THE CASE

1. Respondent **Bart J. Gordon**, a **non-duly qualified candidate**, under the disqualification provisions contained in the Constitution of the United States received **117, 034** votes in Tennessee's November 5, 2002, General Election; **Robert L. Garrison**, the Republican Party Candidate received **57,401** votes in said election. **(Mr. Garrison, did not file an election contest thus, his candidacy is not an issue in this action.)** The Petitioner, **J. Patrick Lyons**, received a total of **3,065 votes certified by Tennessee**. ( See Paragraph 2 below.)

2. Petitioner, hereinabove named, was the **only duly qualified candidate** on Tennessee's General Election ballot, on 5 November 2002 -for Tennessee's 6th Congressional District seat, **WHO**, made a claim to said seat and filed an Election Contest **on the 5th day of December 2002**, with the Clerk of the U.S. House of Representatives, serving the statutory required number of copies hand carried to the Committee on House of Administration, under 2 U.S.C. § 382 – complaining of Article VI, Clause 3; Article I, § 6, cl. 2; Amendment XIV, § 3; and Amendment XX, § 1, **violations against the Constitution of the United States**, and **violations against** Federal Laws, knowingly and willfully committed by Respondent **Bart J. Gordon**, the **non-duly qualified candidate**.

3. **Background**: Petitioner **Lyons** does not assert a claim to said 6th Tennessee Congressional District Seat based on allegedly having received the majority of the votes, **but rather**, on Respondent **Gordon**, being a **non-duly qualified Candidate** based on the **disqualifications** contained in Article VI, Clause 3;

Article I, § 6, § 2; Amendment XIV, § 3; and Amendment XX, § 1, to the Constitution of the United States – applicable to the Respondent Gordon, a State of Tennessee **"National Officer of the United States – Incumbent Member,"** of the 107th Congress of the United States and Tennessee judicial officer, who is under **OATH** to support the Constitution of the United States.

4. **Rule 10(a) of the Supreme Court**: The Decision **(see Appendix A)** issued by the United States House of Representatives – **The Supreme Administrative Agency of the United States** – the issue of this Extraordinary Writ of Mandamus, was decided in a way that conflicts with the decision of the Supreme Court of the United States in Powell v. McCormick, 395 U.S. 486, 520, n. 41. 89 S.Ct. 1944, 1963, n. 41. 23 L.Ed 491 (1969), **supports** Petitioner's position that Article I, § 6, clause 2; Amendment XIV, § 3, and Article VI, Clause 3, to the U.S. Constitution are **disqualification provisions** prohibiting Membership in **either House** of Congress of the United States, **to certain groups of persons** (INCLUDING RESPONDENT GORDON) **having previously taken an oath to support the Constitution**, which directs in part:

> "In addition, the three qualifications set forth in Art. I, § 2, Art. I, § 3, cl. 7, authorizes the disqualification of any person convicted in an impeachment proceeding from 'any Office of honor, Trust, or Profit under the United States'; **Art. I, § 6, cl. 2**, provides that 'no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office'; **and § 3 of the 14th Amendment** disqualified any person 'who, having previously taken an oath . . . to support the Constitution of the United States, shall have

gaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.' **It has been argued that each of these provisions, as well as the Guarantee Clause of Article IV and the oath requirement of Art. VI, cl. 3, is no less a 'qualification' within the meaning of Art. I, § 2, than those set forth in Art. 2, § 2.** Dionisopouls, A Commentary on the Constitutional Issues in the Powell and Related Cases, 17 J. Pub. L. 103, 111-115 (1968) – We need not reach this question, however, since both sides agree that Powell was not ineligible under any of the provisions."

5. **Amendment XX, § 1**: In addition to the **disqualifications** found in Article VI, Clause 3; Article I, § 6, clause 2; and Amendment XIV, § 3, **should this Court** apply the legal and standard English definitions of the word "**SUCCESSOR**", as contained in Amendment XX, § 1, any **Incumbent Member** of Congress is prohibited to take a next term into the (a) next Congress based on the following. See subparagraphs a, b, c, d, e, and f below:

a. **Background**: The retention of a Congressional seat (back-to-back terms) by **Incumbent Members** of the Congress of the United States may have become a widespread practice, but nowhere is this supported by the Constitution of the United States, nor any amendment thereto. To the contrary – Amendment XX, § 1, (in the last segment), to the Constitution of the United States limits the next term to their **successors** – which directs: ". .., **and the terms of their successors shall then begin.**"

b. **English language invoked – Amendment XX, § 1**: Pursuant to definitions of the English language

words **"successor"** and **"incumbent"**, the **next terms** of a Congressional Office is restricted to **"successor(s)"**. Thus, Petitioner respectfully requests for this Court to apply the legal and standard definitions for the English language words **(1) successor; (2) their; and (3) terms** as applicable to Section 1 of Amendment XX, to the Constitution of the United States, which directs: "The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the year in which such terms would have ended if this article had not been ratified; **and the terms of their successors shall then begin.**

c. **Successor** – Black's Law Dictionary, 5th edition, page 1283, defines the word **"successor"** as: "One who has been appointed or elected to hold office **after** the term of **the present incumbent**. One that succeeds or follows, one who takes the place that **another** has left, and sustains like part or character. One who takes the place of another by succession."

d. **After** – Black's Law Dictionary, 5th edition, page 57, defines the word **"after"** as: "Later, succeeding, subsequent to, subsequent in time to." And, "On or After."

e. **Incumbent** – Black's Law Dictionary, 5th edition, page 691, defines the word **"incumbent** as: "A person who is in **possession** of an office, one who is legally authorized to discharge the duties of an office."

f. **"Successor"** does not mean **"Incumbent"**, or the last segment of Amendment XX, § 1 would most certainly have read: "and the terms of the **incumbent** shall then continue." If the intent had

been that only part of the senators and representatives is comprised of successors, the same § 1 would most certainly have ended with: "and the terms of the successors shall then begin", **or** "and the terms of **any** (or **a few**) successors shall then begin". The careful, deliberate, and binding wording of Section 1 to Amendment XX to the Constitution of the United States which directs among others ". . ., **and the terms of their successors (MEANING 'ALL') shall then begin,**" must control as to who is eligible to take the **oath** of office to become a Member of the (a) next U.S. Senate or the (b) next U.S. House of Representatives as required by the Sixth Article of the Constitution of the United States and requirements set forth by section 2 of the act of May 13, 1884 (23 Stat. 22).

6. Respondent **Bart J. Gordon**, an **Incumbent Member** of the 107th Congress of the United States, currently serving in the 108th Congress of the United States under the **disqualification** provision contained in Article I, § 6, clause 2, Amendment XIV, § 3; Amendment XX, § 1; and Article VI, Clause 3 to the Constitution of the United States. And, pursuant to Tennessee Annotated Code 8-18-101 (Annotated Code) constitutes insurrection as described in Amendment XIV, § 3 and 18 U.S.C. § 2383 should this Court apply and enforce the legal and standard definition to the word **"insurrection"**, and precedence provided under a, b, c, and d below:

a. Webster's New Collegiate Dictionary (Based on Webster's New International Dictionary – Second Edition Copyright 1934, 1939, 1949, 1950), copyright 1951, on page 437, defines **insurrection** as: "A rising up against civil **or political authority**".

b. The Winston Simplified Dictionary (Including All

the Words in Common use Defined So That They Can Be Easily Understood) Copyright 1919, defines "**insurrection**" as: "Active or open rebellion **against authority**".

c. **18 U.S.C. § 2383. Rebellion or Insurrection** directs: "Whoever, . . . . . , **engages in any rebellion or insurrection against** . . . . . **the laws thereof (PLEASE NOTE: against** the laws of the United States, **not against** the United States), . . . . . shall be **fined** not more than $10,000 or **imprisoned** not more than ten years, or both, and shall **be incapable of holding any office under** the United States. (June 25, 1948, ch. 645, 62 Stat. 808).

d. The late President of the United States **George Washington** on **20 November 1794** in his communication to the 3rd Congress, 2nd Session (**See Congressional Document No. 56 – from the 3rd Congress, 2nd Session – 1794**) defined **insurrection** as ", **laws of the United States were opposed**, and execution thereof obstructed. . ."

7. **MOCK CONGRESSIONAL PROCEEDING:** Respondents **Ney** and **Larson**, in an attempt to cover-up for their knowing and willful refusal to enforce Article VI, Clause 3; Article I, § 6, clause 2; Amendment XIV, § 3; and Amendment XX, § 1 to the Constitution of the United States – said Respondents, in violations of **2 U.S.C. § 392**, 66 days **BEFORE** Petitioner's (Contestant's) final filings on **14 April 2003**, filed in accordance to the statutory filing requirements outlined in Chapter 12-Contested Elections, on **5 February 2003**, according to Committee on House Administration letter dated the **29th day of April 2003** (See **Appendix B**) with the signature of Respondent **Matthew S. Petersen**, Counsel – Committee on House Administration,

affixed, directs among others: "On February 5, 2003, the Committee on House Administration by voice vote voted to favorably report to the full House of Representatives a resolution dismissing the election contest against Representative Bart Gordon (TN-6)."

**a. ON THE HOUSE FLOOR**: Respondent **Ney** and Respondent **Larson**, on 5 February 2003, both were involved in the taking of the referenced voice vote to favorably report to the full House of Representatives a resolution (later known as H. Res. 318) dismissing said election contest against Representative **Bart Gordon** (TN-6) – of which both Respondent **Ney** and **Larson** had first hand knowledge of the issues presented in said Election contest. **However**, on **15 July 2003**, during House Session **(as shown on the C-Span Network)** Respondent **Ney** presented Resolution 318 requesting that said resolution be dismissed. Respondent **Larson** reserving his right to object asked Respondent **Ney** to explain the purpose of Resolution 318 causing the viewers to believe that he **(Larson)** had no knowledge of the contents of Resolution 318. After Respondents **Ney** and **Larson** completed what appeared to be a well rehearsed dismissal act, Respondent **Larson's** non-objection, allowed said Resolution 318 to be dismissed. **Please record for the record** that said **5 February 2003** resolution dismissing the election contest against Representative (Respondent) **Gordon**, is (was) voted on in violation to **2 U.S.C. § 392(a)**, which directs in part: "Contested election cases shall be heard by the committee (House Administration) on the papers, depositions, and exhibits filed with the Clerk. Such papers, depositions, and exhibits shall constitute the record of the case." Any reasonable minded individual after taking into consideration that the record did not close until Petitioner's **14 April 2003** final filings, **how is it**

**legally possible for a voice vote to have been taken on 5 February 2003, 68 calendars days BEFORE the close of the record?**

**ARGUMENT**

1. Page 4 of **REPORT** referenced above argues in part: "The Committee finds that, as a general matter, challenges to the qualifications of a member-elect to serve in the Congress fall **outside** the purview of the FCEA, which was designed to consider allegations relating to the actual conduct of an election." **If in fact, challenges to the qualifications of a member-elect to serve in Congress fall outside of the purview of the FCEA, (Committee on House Administration), said committee has (had) no constitutional authority to dismiss said Election Contest, but rather, should have forwarded it to a Committee in Congress who is vested with authority under Article I, § 5, clause 1, which directs – "(e)ach House shall be the Judge of the Elections, Returns, and Qualifications of its own Members."**

2. The Constitution of the United States speaks for itself – the languae is precise and clear in Article VI, Clause 3; Article I, section 6, cl. 2; Amendment XIV, section 3; and, Amendment XX, section 1. The **disqualification** clauses to hold certain offices under the United States – therefore, no additional argument is needed.

3. **See Public Laws – CH. 645- June 25, 1948 [62 Stat.], sections 204; 205; 591; and, 602.**

4. See APPENDIX D for Tennessee Supreme Court Rules applicable to Respondent **Gordon.**

5. **Judicial Officer**: "Every state legislator and executive and **judicial officer** is solemnly committed by **oath** taken pursuant to Art. VI, cl. 3, "to support this Constitution." **Chief Justice Taney** speaking for an unanimous Court in **1859**, said that this requirement reflects the framers' "anxiety to preserve it (the Constitution) in full force, in all its powers, and to guard against resistance or evasion of its authority, on the part of a State . ." Abelmen v. Booth, 21 How. 506, 524, 16 L.Ed. 169. "No Act of congress can authorize a violation of the constitution." United States v. Brignoni-Ponce, 422 U.S. 873, 95 S Ct 2574.

**REASONS FOR GRANTING WRIT**

1. This Petition for an Extraordinary Writ of Mandamus involves a Constitution (U.S.) issue that must ultimately be decided by the Supreme Court of the United States.

2. **E Pluribus Unum in Perpetuo Res Ipsa Loquitur**

a. The Constitution of the United States of America was at one time conceived and construed by our framing fathers to serve its universal and perpetual purpose as the supreme Law of the Land, regardless of the winds of time and the whims of men.

b. Its application and enforcement leaves no room for individual or oral argument and it is from that incorruptible spirit that Petitioner (a believer in the written text of said Constitution) seeks enforcement of said Constitution by the **"Ultimate interpreter of the Constitution of the United States – the Supreme Court of the United States."**

c. Pursuant to Article III, § 1, which directs: "Judicial Power . . . shall be vested in one supreme court, and in such inferior Court as the Congress may . . . establish." And, § 2 mandate that the "judicial Powell shall extend to **all Cases** . . . arising under this Constitution. ." **It has long been held that a suit "arises under" the Constitution if a petitioner's claim "will be sustained if the Constitution . . . (is) given one construction and will be defeated if (it is) another."** Bell v. Hood, 327 U.S. 678, 685 (1946). See King County v. Seattle School District No. 1, 263 U.S. 363-364 (1923). Cf. Osborn v. Bank of the United States, 9 Wheat 738 (1824). See generally C. Wright, Federal Courts 48-52 (1923).

3. **Specified relief requested**: Petitioner, **J. Patrick Lyons**, the **only duly qualified** congressional candidate for Tennessee's Sixth Congress seat currently insurrectionally held by Respondent **Gordon** filed an Election Contest demanding said seat requests the following: **(1)** That Respondent, **Bart J. Gordon**, be removed based on the Constitution of the United States **disqualifications provisions** contained in Article VI, clause 3; Article I, § 6, clause 2; Amendment XIV, § 3; and Amendment XX, § 1, the subject of this Writ; **(2)** that Petitioner, **J. Patrick Lyons**, be paid all back pay and allowances effective to **7 January 2003**; and **(3)** that the U.S. House of Representatives – Committee on House Administration, be ordered to immediately allow the Petitioner, **J. Patrick Lyons**, to hold the Sixth Congressional District Seat for remainder of the 108th Congress of the United States.

4. Should, however, special circumstances prevail to prevent the unequivocal enforcement of the Constitution of the United States, Petitioner

demands a trial by jury before this Supreme Court, **which more likely than not will be denied.** However, precedence exist for such a trial as supported by the following: In **1794**, the Supreme Court of the United States **(February Term)** heard a case under its original jurisdiction **(Article III of the Constitution of the United States)** in the noted case, Georgia v. Brailsford – **one of the first special jury trials to be heard before the Supreme Court of the United States**, in which Chief Justice **Jay**, providing instructions to the jury stated in part:

"Justice is indiscriminately due to all, without regards to numbers, wealth, or rank. Because the State of Georgia, composed of many thousands of people, the litigated sum cannot be of great moment, you will not for this reason be justified, in deciding against her claim; if the money belongs to her, she ought to have it; but on the other hand, no consideration of the circumstances, or of the comparative insignificance of the defendants, can be a ground to deny them the advantage of a favorable verdict, if in justice they are entitled to it." The State of Georgia versus Brailsford, et al., 3 U.S. (Dall,) 1, 1Led. 483 **(1794)**

Respectfully Submitted,

**J. PATRICK LYONS (*)**
200 7th St. – Bell Buckle
**P.O. Box 622**
Shelbyville, TN 37160
**931-389-9087**

**(*)**Counsel of Record – **Pro se**

# APPENDIXES

A

**CONGRESS OF THE UNITED STATES**
**House of Representatives**
**Committee on House Administration**
**1309 Longworth House Office Building**
**(202)225-8281**
**Washington, DC 20515-6157**
**www.house.gov/cha**

**July 23, 2003**

J. Patrick Lyons
P.O. Box 622
Shelbyville, TN 37160

Dear Mr. Lyons:

On July 15, 2003, the United States House of Representatives Unanimously passed H. Res. 318, which formally dismissed the election contest relating to the office of Representative from the Sixth Congressional District of Tennessee. Enclosed is a copy of H. Res. 318 and a report setting forth the Committee on House Administration's rationale for recommending the dismissal of the election contest.

Sincerely,

"s/_____"

Bob Ney
Chairman
Committee on House Administration

108th CONGRESS
1ST SESSION **H. RES. 318**

Dismissing the election contest relating to the office of Representative from the Sixth Congressional District of Tennessee

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IN THE HOUSE OF REPRESENTATIVES
July 15, 2003
Mr. Ney submitted the following resolution; which was considered and agreed to

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**RESOLUTION**

Dismissing the election contest relating to the office of Representative from the Sixth Congressional District of Tennessee

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*Resolved,* That the election contest relating to the office of Representative from the Sixth Congressional District of Tennessee is dismissed.

O

108TH CONGRESS
*1st Session*
HOUSE OF REPRESENTATIVES
REPORT
108–208

# DISMISSING THE ELECTION CONTEST AGAINST BART GORDON

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JULY 15, 2003.—Referred to the House Calendar and ordered to be printed

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Mr. NEY, from the Committee on House Administration, submitted the following

# REPORT

[To accompany H. Res. 318]

The Committee on House Administration, having had under consideration an original resolution, dismissing the election contest against Bart Gordon, report the same to the House with the recommendation that the resolution be agreed to.

## COMMITTEE ACTION

On February 5, 2003, by voice vote, a quorum being present, the Committee agreed to a motion to report the resolution favorably to the House.

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) rule XIII of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## STATEMENT ON BUDGET AUTHORITY AND RELATED ITEMS

The resolution does not provide new budget authority, new spending authority, new credit authority, or an increase or decrease in revenues or tax expenditures. Thus, clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and the provisions of section 308(a)(1) of the Congressional Budget Act of 1974 are not applicable.

## STATEMENT OF FACTS

On December 5, 2002, J. Patrick Lyons ("contestant") filed with the Clerk of the House of Representatives a Notice of Contest captioned "J. Patrick Lyons, Contestant, v. Bart J. Gordon, Contestee." The document, prepared by the contestant, was filed pursuant to the Federal Contested Elections Act ("FCEA").[1]

The contestant ran as an Independent for the seat in the Sixth Congressional District of Tennessee on November 5, 2002. The other principal candidates for the Sixth Congressional District seat were incumbent Democrat Bart Gordon ("contestee") and Republican challenger Richard L. Garrison. The results released by the Tennessee Secretary of State showed that the contestee received 117,034 votes; Mr. Garrison, 57,401 votes; and the contestant, 3,065 votes. The Tennessee Secretary of State certified the contestee as the winner of the Sixth Congressional District seat on December 2, 2002.

## BASIS OF CONTEST

In the Notice of Contest, the contestant alleges that the contestee has committed violations of the Constitution that amount to acts of insurrection. To begin, the contestant claims that an incumbent member of Congress is required by the Constitution—specifically, (1) Article I, section 6, paragraph 2[2] and (2) the 20th Amendment, section 1[3]—to resign his or her seat prior to seeking re-election to that seat. According to the contestant, the contestee's failure to resign his seat prior to running for re-election rendered him an ineligible candidate for the seat.

Moreover, the contestant asserts that the contestee, who is an inactive member of the Tennessee Bar, is violating the "separation of powers" principle enshrined in the Constitution by remaining "a Judicial Officer of the Courts of Tennessee" while serving "as a Legislative Officer of the United States." In the contestant's estimation, by allegedly contravening the aforementioned constitutional principles, the contestee qualifies as an "insurrectionist" who is breaching his sworn duty to support the Constitution, citing Article VI, clause 3.[4] Therefore, according to the contestant, the contestee is constitutionally forbidden from holding federal office by clause 3 of the 14th Amendment, which states: "No person shall be a Senator or Representative in Congress, * * * who, having previously taken an oath, as a member of Congress, * * * to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same * * *."

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[1] 2 U.S.C. §§381–96.

[2] "No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office."

[3] "The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

[4] "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution * * *."

The contestant makes no allegations of irregularities, fraud, or wrongdoing with respect to the election for the Sixth Congressional District seat.[5]

## STANDING

To have standing under the FCEA, a contestant must have been a candidate for election to the House of Representatives in the last preceding election and claim a right to the contestee's seat.[6] In the instant case, the contestant's name was printed as a candidate for the Sixth Congressional District on the official ballot for the November 5, 2002 election. Thus, the first prong of the two-part test is met.

As to the second prong, the contestant states in his Notice of Contest that "Contestant claims a right to Contestee's seat because, the Contestee was ineligible/not-qualified to be on the 5 November 2002 General Election Ballot." The contestant, however, fails to explain the logical connection between the contestee's alleged ineligibility and the contestant's entitlement to the contestee's congressional seat. It is unclear whether merely claiming a right to a contestee's seat without explaining the nexus between the alleged election deficiencies and the contestant's right to the seat is sufficient to establish standing.[7] However, the Committee opts not to resolve this issue at this time, instead choosing to resolve this election contest on other grounds.

## TIMING/NOTICE

The Notice of Contest appears to have been served upon Congressman Gordon and filed within the appropriate time structures of the FCEA.

## RESPONSE BY MR. GORDON

The contestee did not file a formal answer in response to the Notice of Contest (though he did submit a one-page letter dated January 3, 2003 that related to the matter). Nevertheless, the burden remains upon the contestant to provide credible allegations to the House sufficient to support a claim under the FCEA.[8]

## ANALYSIS

As a threshold matter, the Committee will proceed to consider a Notice of Contest only if the Notice states grounds sufficient to change the result of an election. In other words, a contestant must allege irregularities, fraud, or wrongdoing with respect to the conduct of an election that, if proven, would likely overturn the origi-

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[5] The Committee notes that the contestant also brought a case in federal district court in Tennessee challenging the qualifications of the contestee, in which he set forth the same arguments as he does in this election contest. On May 29, 2003, the district court dismissed with prejudice the contestant's case. *Lyons* v. *Thompson*, No. 3:02–1004 (M.D. Tenn. May 29, 2003).

[6] 2. U.S.C. § 382(a).

[7] The Committee considers the contestant's claim that he has as a right to the Sixth Congressional seat in Tennessee to be meritless. As the contestant acknowledges in his own filings, he finished a distant third in the final vote totals. Even if we were to assume that Mr. Gordon was ineligible to serve in Congress, the contestant has put forth no reasons why he would be more entitled to the seat than the second-place finisher who received over 54,000 more votes than the contestant did. Therefore, the contestant does not appear to be in a position to claim a right to Tennessee's Sixth Congressional seat.

[8] Id. § 385.

nal election outcome. Otherwise, the Committee will recommend dismissal of the contest.

As noted above, the contestant does not advance a single allegation of irregularity or fraud in the conduct of the election for Tennessee's Sixth Congressional seat. In addition, the contestant raises no objections regarding the accuracy of the vote totals certified by the Tennessee Secretary of State that showed him receiving 2 percent of the vote and Mr. Gordon receiving 66 percent. Rather, the contestant's Notice of Contest relies exclusively on his contention that Mr. Gordon was not qualified either to run for Tennessee's Sixth Congressional seat or to serve in the Congress if elected.

The Committee finds that, as a general matter, challenges to the qualifications of a member-elect to serve in the Congress fall outside the purview of the FCEA, which was designed to consider allegations relating to the actual conduct of an election. Nothing in the contestant's Notice of Contest persuades the Committee to re-consider this common interpretation of the FCEA. Consequently, the Committee concludes that the contestant's arguments regarding Mr. Gordon's qualifications to serve in Congress do not constitute grounds sufficient to change the result of the election and, therefore, recommends that this election contest be dismissed.

○

B

**CONGRESS OF THE UNITED STATES**
**House of Representatives**
Committee on House Administration
1309 Longworth House Office Building
(202)225-8281
**Washington, DC 20515-6157**
www.house.gov/cha

April 29, 2003

J. Patrick Lyons
P.O. Box 622
Shelbyville, TN 37160

Dear Mr. Lyons:

On February 5, 2003, the Committee on House Administration agreed by voice vote to favorably report to the full House of Representatives a resolution dismissing the election contest against Representative Bart Gordon (TN-6). No date has been scheduled yet for consideration of this resolution on the House floor. The reasons for the dismissal will be set forth in a committee report that will accompany the resolution when it is considered on the House floor.

Sincerely,

"s/_____"

Matthew S. Petersen
Counsel
Committee on House Administration

C

be acting. (Acts 1885. Ch. 11, §§ 1, 2; Shan., § 3197; Code 1932, § 5897; T.C.A. (orig. ed.), § 8-1627).

**Cross-References**. Depositions. Power to take. §8-16-302.

**Law Reviews**. Tactical Advantages from the Uses of Discovery (William Wicker), 27 Tenn. L. Rev. 323.

## CHAPTER 17

## (RESERVED)

## CHAPTER 18

## ELIGIBILITY, COMMISSIONS, AND OATHS

SECTION
8-18-101. Eligibility to hold office
8-18-102. Penalty for acceptance of office by ineligible person.
8-18-103. Residence of officers.
8-18-104. Terms of office – Filling of vacancies.
8-18-105. Terms of appointive officers.
8-18-106. Officers commissioned.
8-18-107. Administration of oaths of office.
8-18-108. Filing of oaths of state and judicial officers.
8-18-109. Filing of oaths of county officers.
8-18-110. Endorsement of time of filing.
8-18-111. Form of oath of office.
8-18-112. Deputies' oaths.
8-18-113. Acting without oath.

8-18-114. Application of oath provisions to future offices.

8-18-101. **Eligibility to hold office.** – All persons eighteen (18) years of age or older who are citizens of the United States and of this state, and have been inhabitants of the state, county, district, or circuit for the period required by the constitution and laws of the state are qualified to hold office under the authority of this state **except:**

(1) Those who have been convicted of offering or giving a bribe, or of larceny, or any other offense declared infamous by law, unless restored to citizenship in the mode pointed out by law;

(2) Those against whom there is a judgment unpaid for any moneys received by them, in any official capacity, due to the United States, to this state, or any county of this state;

(3) Those who are defaulters to the treasury at the time of the election, and the election of any such person shall be void;

(4) Soldiers, sailors, marines, or airmen in the regular army or navy or air force of the United States; and

(5) **Members of congress, and persons holding any office of profit or trust under any foreign power, other state of the union, or under the United States.** (Code 1858, § 748 (deriv. Const., 1834, art. 2, § 10; art 6, § 7; art 9, § 3; art. 10, § 3; Acts 1843-1844, ch. 197, § 2); Shan., § 1069; mod. Code 1932, § 1812; modified; impl. Am. Acts 1971, ch. 162, § 3; Acts 1973, ch. 76, § 1; T.C.A. (orig. ed.), § 8-1801; Acts 1980, ch. 453, § 1; 1989, ch. 320, § 1; 1993, ch. 373, § 1.)

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**Tenneessee Supreme Court Rules**

**Rule 20.1; Rule 20.2;**

**Rule 20.9; Rule 20.8**

**Tennessee Supreme Rules**: Under Tennessee law, Respondent Gordon as a Judicial Officer of the State of Tennessee is violating the "**separation of powers**" principle enshrined in the Constitution. Rule 20.1 directs among others: "Every attorney to practice before this Court, **except** those exempt under **Section 20.2**, shall pay to the Board of Professional Responsibility on or before March 1 of each year. Respondent Gordon (Bar Number 2921) **voluntarily** remains today a member in good standing with the Tennessee Bar, with his current dues paid pursuant Rule 20.1, good through February 28, 2004, thus, is eligible to practice law in any court in Tennessee. "The Supreme Court has the authority to unify the bar of this state by requiring the annual registration and license fees **as a condition to the continued practice of law**." Barger v. Brock, 535 S.W. 2d 337 (Tenn. 1976). Rule 20.2, provides an exemption to attorneys from paying annual dues set forth in 20.1 – **however, Respondent Gordon does not qualify for any of the exemptions** – Rule 20.2. There shall be exempted from application of this rule (20.1): a. (Delited by 1985 amendment); b. Retired attorneys - **(Respondent Gordon is not a retired office of the courts of Tennessee)**; c. Attorneys on temporary duty with the armed forces - **(Respondent Gordon is not on temporary duty with the armed forces)**; d. Faculty members of Tennessee law schools who do not practice - **(Respondent Gordon is not a faculty member of a Tennessee law school)**. Rule 20.8. An attorney who has retired or **is not engaged in**

**practice** shall advise the Board of Professional Responsibility that such attorney desires to assume inactive status and discontinue the practice of law.

**LICENSE TO PRACTICE LAW**

Respondent **Gordon's** address under which his licenses to practice law in Tennessee is issued to – **P.O. Box 1986**, Murfreesboro, TN 37133. However, it is worth noting that he (**Respondent Gordon**) lists said address in Congressional Official documentation. "**See 1999 – 2000 Congressional Directory – 106th CONGRESS**", on Page 252, which directs among others: **Office listing: P.O. Box 1986**, 106 South Maple Street, Murfreesboro, TN 37133, **telephone:615-896-1986**. **Note**: Under U.S. Postal regulations – when a P.O. Box number is listed before a street address, all mail addressed to such P.O. Box number is forwarded to the street address – which means that Respondent **Gordon** receives any and all correspondence regarding his Tennessee licenses to practice law at his official U.S. Congressional Officelocated at 106 South Maple Street, Murfreesboro, TN 37133.